

ESTTA Tracking number: **ESTTA186504**

Filing date: **01/14/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Abbott Laboratories
Granted to Date of previous extension	01/16/2008
Address	100 Abbott Park Road D377/BLDG AP6A Abbott Park, IL 60064 UNITED STATES
Attorney information	Raymond I. Geraldson, Jr. Pattishall, McAuliffe, Newbury, Hilliard & Geraldson LLP 311 South Wacker Drive Suite 5000 Chicago, IL 60606 UNITED STATES rgeraldson@pattishall.com, dlemack@pattishall.com, rburch@pattishall.com, jmn@pattishall.com Phone:312-554-8000

### Applicant Information

Application No	77136030	Publication date	09/18/2007
Opposition Filing Date	01/14/2008	Opposition Period Ends	01/16/2008
Applicant	Marsh, William #D612 13603 Marina Pointe Dr. Marina Del Rey, CA 90292 UNITED STATES		

### Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Dietary supplements
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### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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### Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	1776224	Application Date	11/02/1992
Registration Date	06/15/1993	Foreign Priority Date	NONE
Word Mark	NEPRO		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 005. First use: First Use: 1991/07/00 First Use In Commerce: 1991/07/00 medical nutritional supplement

Attachments	Notice of Opposition.Serial No.77136030.NEPROFIN.pdf ( 5 pages )(79016 bytes )
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### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Rebecca R. H. Burch/
Name	Rebecca R. H. Burch
Date	01/14/2008

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In The Matter of Application Serial No. 77/136,030: NEPROFIN

Published in the *Official Gazette* on September 18, 2007, Page TM 514 in Class 5

ABBOTT LABORATORIES,	)	
	)	
Opposer,	)	
v.	)	Opposition No.
	)	
WILLIAM MARSH,	)	
	)	
Applicant.	)	

**NOTICE OF OPPOSITION**

Abbott Laboratories ("Opposer"), an Illinois corporation, having its principal place of business at 100 Abbott Park Road D377/BLDG AP6A, Abbott Park, Illinois 60064, believes it will be damaged by registration of the mark shown in App. Ser. No. 77/136,030 and opposes the same.

The grounds for opposition are as follows:

1. Opposer has for many years been engaged in the manufacture, distribution, advertising and sale of a wide variety of nutritional and dietary products.
2. Since long prior to March 20, 2007, the filing date of the intent-to-use application opposed herein, and at least as early as July 1991, Opposer has continually advertised, promoted and sold medical nutritional supplements under the mark NEPRO ("NEPRO Mark").
3. Opposer owns United States Reg. No. 1,776,224 for the mark NEPRO for "medical nutritional supplement" in International Class 5.
4. Opposer's registration for the NEPRO Mark is valid and subsisting and is owned by Opposer. The registration is incontestable under 15 U.S.C. §§ 1065 and 1115(b). The certificate of registration thereof constitutes "conclusive evidence" of "the validity of the

registered mark, of the registrant's ownership of the mark, and of the registrant's exclusive right to use of the mark[s] in connection with the goods or services specified in the registration." 15 U.S.C. § 1115.

5. Opposer has sold substantial dollars worth of goods under its NEPRO Mark throughout the United States, and has spent substantial sums advertising and promoting its NEPRO Mark throughout the United States.

6. By virtue of Opposer's extensive sales, advertising and promotion, Opposer's NEPRO Mark has become well-known throughout the United States, and Opposer now owns a valuable goodwill symbolized by its NEPRO Mark.

7. On March 20, 2007, William Marsh ("Applicant") filed an intent-to-use application to register the mark NEPROFIN in International Class 5 for "[d]ietary supplements" (Serial No. 77/136,030).

8. Upon information and belief, neither Applicant nor any predecessor or related entity of Applicant has any basis for claiming rights in NEPROFIN in connection with the identified goods prior to March 20, 2007, the filing date of the application opposed herein.

9. Applicant's planned use of and application to register NEPROFIN is without Opposer's consent.

10. Applicant's proposed use of NEPROFIN for the goods listed in Paragraph 7 above is likely to cause confusion, mistake or deception with Opposer and its NEPRO Mark, and is likely to cause purchasers and others erroneously to believe that Applicant's goods are Opposer's goods or that Applicant or its goods are in some way legitimately connected with, sponsored or approved by Opposer.

11. Accordingly, Applicant's registration of NEPROFIN would be damaging to Opposer.

WHEREFORE, Opposer prays that its opposition be sustained and registration of Application Serial No. 77/136,030 be refused.

Opposer submits the requisite filing fee of \$300. Please debit any deficiency or credit any overpayment to Account No. 16-0650. Please address all correspondence to Raymond I. Geraldson, Jr., Pattishall, McAuliffe, Newbury, Hilliard & Geraldson LLP, 311 South Wacker Drive, Suite 5000, Chicago, Illinois 60606.

PATTISHALL, McAULIFFE, NEWBURY,  
HILLIARD & GERALDSON LLP

Dated: January 14, 2008

By: 

Raymond I. Geraldson Jr.  
Danielle B. Lemack  
Rebecca R. H. Burch  
311 South Wacker Drive  
Suite 5000  
Chicago, Illinois 60606  
(312) 554-8000

Attorneys for Opposer

**CERTIFICATE OF SERVICE**

I, Rebecca R. H. Burch, hereby certify that a copy of the foregoing **NOTICE OF OPPOSITION** was served upon William Marsh, 13603 Marina Pointe Dr., Apt. D612, Marina Del Rey, CA 90292, and his attorney Scott M. Hervey, Weintraub Genshlea Chediak Law Corporation, 400 Capitol Mall, Eleventh Floor, Sacramento, CA 95814, via first-class mail, on this 14th day of January 2008.

  
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**CERTIFICATE OF ELECTRONIC TRANSMISSION**

I, Rebecca R. H. Burch, hereby certify that this **Notice of Opposition** is being electronically transmitted to the Patent and Trademark Office on this 14th day of January, 2008.

  
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